

Rule 15. Amended And Supplemental Pleadings.

(a) Amendments. With the exception of pleading the defenses mentioned in Rule 12 (h)(1), a party may amend his pleadings at any time without leave of the court. Where, however, upon motion of an opposing party, the court determines that prejudice would result or the disposition of the cause would be unduly delayed because of the filing of an amendment, the court may strike such amended pleading or grant a continuance of the proceeding. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 20 days after service of the amended pleading, whichever period is longer, unless the court otherwise orders.

(b) Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended in its discretion. The court may grant a continuance to enable the objecting party to meet such evidence.

(c) Relation Back of Amendments. An amendment of a pleading relates back to the date of the original pleading when:

(1) the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, or
(2) the amendment changes the party or the naming of the party against whom a claim is asserted if the foregoing provision (1) is satisfied and, within the period provided by Rule 4(i) for service of the summons and complaint, the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (B) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

(d) Supplemental Pleadings. A party may at any time without leave of court file a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Where, however, upon motion of an opposing party, the court determines that prejudice would result or the disposition of the cause would be unduly delayed because of the filing of a supplemental pleading, the court may strike such amended pleading or grant a continuance of the proceeding. A party shall plead in response to a supplemental pleading within the time remaining for response to the original pleading or within 20 days after service of the supplemental pleading, whichever period is longer, unless the court otherwise orders.

FRCP 15(a) and is generally in accord with prior Arkansas law. The Committee believed that amendments to pleadings should be allowed in nearly all instances without special permission from the court. The court is, however, given discretion to strike any amendment which would cause prejudice or unduly prolong the disposition of a case. As an alternative to striking an amendment, a continuance could be granted by the trial court. Under prior Arkansas law, trial courts were given broad discretion to permit an amendment to stand. *Hogue v. Jennings*, 252 Ark. 1009, 481 S.W.2d 752 (1972); *Bridgman v. Drilling*, 218 Ark. 772, 238 S.W.2d 645 (1951). Generally speaking, it is the intent of this rule that amendments to pleadings should be permitted without leave of the court in all instances unless it can be demonstrated that prejudice or delay would result. To this extent, Rule 15 is more liberal than superseded Ark. Stat. Ann. 27-1160 (Repl. 1962) and is certainly more liberal than the Federal Rule.

2. [As amended by Per Curiam, February 26, 1996] Section (b) is identical to FRCP 15(b). It follows prior Arkansas law by permitting amendments to conform to the proof adduced at trial. This rule goes somewhat further, however, by more or less making it mandatory that pleadings be amended to conform to the proof where there has been no objection to such proof. *Metropolitan Life Ins. Co. v. Fugate*, 313 F.2d 788 (C.C.A. 5th, 1963); *Bradford Audio Corp. v. Pious*, 329 F.2d 67 (C.C.A. 2nd, 1968). (Emphasis added.) Prior Arkansas law granted the trial court considerable discretion to permit pleadings to be amended to conform to the proof where there had been no objection raised. *Velda Rose Motel, Inc. v. Eason*, 241 Ark. 1041, 411 S.W.2d 502 (1967); *Smith v. F. & C. Engineering Co.*, 225 Ark. 688, 285 S.W.2d 100 (1956). Where a new or different claim or defense was sought to be presented over the objection of the opposing party, the pleadings could not be amended to conform to the proof under prior Arkansas law. *Shelton v. Harris*, 225 Ark. 855, 286 S.W.2d 20 (1956); *O'Guinn Volkswagen, Inc., v. Lawson*, 256 Ark. 23, 505 S.W.2d 213 (1974). This rule does liberalize somewhat prior Arkansas law.

3. With the exception of minor wording changes, Section (c) is identical to FRCP 15(c). The question of relation back of pleadings normally does not arise unless the statute of limitations is involved. Under this and the Federal Rule, an amendment always relates back when it arises out of the conduct, transaction or occurrence set forth in the original pleading. Under prior Arkansas law, the question of whether a pleading related back was determined by whether the amendment asserted a new cause of action against the defendant. If it did, the amended pleading could not stand or relate back. *Warmack v. Askew*, 97 Ark. 19, 132 S.W. 1013 (1910); *Love v. Couch*, 181 Ark. 994, 28 S.W.2d 1067 (1930).

4. Section (c) also permits changing the party against whom a claim is asserted if the party sought to be brought in received such notice of the action that he would not be prejudiced if brought in and knew or should have known that but for mistake, he would have been made a defendant initially. Prior Arkansas law was somewhat more prohibitive in that where there was a substantial change in identity of the defendant so as to amount to a change of defendants, the amendment would not be permitted to relate back. *Davis v. Chrisp*, 159 Ark. 335, 252 S.W. 606 (1923); *Arkansas Land & Lumber Co. v. Davis*, 155 Ark. 549, 244 S.W. 730 (1922).

5. Omitted from Section (c) is the second paragraph of FRCP 15(c). Such provision is unnecessary under Arkansas practice.

6. Section (d) is identical to Section (d) of the Federal Rule. It is in accord with superseded Ark. Stat. Ann. 27-1161 (Repl. 1962). Its purpose is simply to allow a pleading to be supplemented to reflect facts which develop after the filing of the original pleading.

Additions to Reporter's Notes, 1984 Amendments: - Rule 15(a) is amended so that the first sentence takes account of the amendment to Rule 12(h)(1) making it clear that a waivable defense may not be raised by amendment "at any time."

The Rule is also amended to enlarge from 10 to 20 days the time to respond to an amended pleading.

Addition to Reporter's Notes, 1993 Amendment: - Subdivision (c) is revised to prevent parties against whom claims are made from taking unfair advantage of otherwise inconsequential pleading errors to sustain a limitations defense. The changes are based on the 1991 amendments to the corresponding federal rule.

Paragraph (1) is simply a restatement of the general "relation back" principle and works no change in the law. However, paragraph (2) effectively overturns the interpretation that had been given FRCP 15 with respect to a misnamed defendant. See *Schiavone v. Fortune*, 477 U.S. 21 (1986), cited with approval in *Harvill v. Community Methodist Hospital Ass'n*, 302 Ark. 39, 786 S.W.2d 577 (1986), and *Southwestern Bell Tel. Co. v. Blastech, Inc.*, 313 Ark. 202, 852 S.W.2d 813 (1993). Under the revised rule, an intended defendant who is notified of an action with the period allowed by Rule 4(i) for service of a summons and complaint may not defeat the action on account of a defect in the pleading with respect to the defendant's name, provided that the requirements of clauses (A) and (B) have been satisfied. If the notice is received within the period specified in Rule 4(i), including an extension granted pursuant to that rule, a complaint may be amended at any time to correct a formal defect such as a misnomer or mis-identification.

Addition to Reporter's Notes, 2001 Amendment: - Subdivision (d), which governs supplemental pleadings, is amended to make its terms parallel with those of subdivision (a), which applies to amended pleadings. By virtue of the amendment, permission of the court to file a supplemental pleading is no longer necessary, although the opposing party may move to strike the pleading on grounds of prejudice or undue delay. Also, a response to the supplemental pleading is now required. Under the original version of the rule, a response was to be filed only if the court "deem[ed] it advisable."

History Text:

History. Amended July 9, 1984, effective September 1, 1984; amended November 8, 1993, effective January 1, 1994; amended February 1, 2001

Associated Court Rules:

Rules of Civil Procedure

Group Title:

III. Pleadings and Motions

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